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6 Attorneys for Plaintiff and Counterdefendant
Monterey Gourmet Foods, Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 MONTEREY GOURMET FOODS,
INC., a Delaware corporation,

12 Plaintiff,

13 vs.

14 WINDSOR QUALITY FOOD
15 COMPANY LTD., a Texas Limited
Partnership; and DOES 1 through 20,
16 inclusive,

17 Defendants.

No. C08-01316 (JCS)

Case assigned for all purposes to
Hon. Joseph C. Spero

**NOTICE OF MOTION AND MOTION OF
COUNTERDEFENDANT MONTEREY
GOURMET FOODS, INC.'S TO DISMISS
COUNTERCLAIM OF WINDSOR
QUALITY FOOD COMPANY, LTD.
FRCP RULE 12(b)(6)**

Date: June 6, 2008
Time: 9:30 a.m.
Courtroom A (Hon. Joseph C. Spero)
Trial Date: Not Set

Accompanying Papers: Memorandum of
Points & Authorities; Request for Judicial
Notice; Proposed Order; Companion
Special Motion to Strike

22 AND RELATED COUNTERCLAIM.

24 **NOTICE OF MOTION TO DISMISS COUNTERCLAIM**

26 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

27 **PLEASE TAKE NOTICE** that on June 6, 2008, at 9:30 a.m., or as soon thereafter
28 as the matter may be heard in the United States District Court for the Northern District of

1 California, Courtroom A, 15th Floor, 450 Golden Gate Avenue, San Francisco, California,
 2 Plaintiff and Counterdefendant Monterey Gourmet Foods, Inc. ("MGF") will and hereby
 3 does make a motion to dismiss the Counterclaim of Defendant and Counterclaimant
 4 Windsor Quality Food Company Ltd. ("Windsor"), pursuant to Rule 12(b)(6) of the
 5 Federal Rules of Civil Procedure. Said motion is made in the alternative, and as a
 6 companion motion to MGF's special motion to strike, which is set for hearing at the same
 7 time and place.

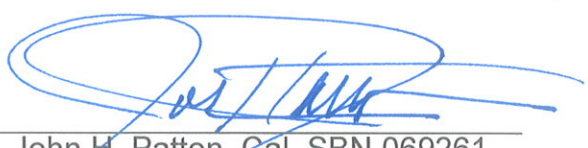
8 Said motion is made and based on the grounds that Windsor's counterclaim fails
 9 to state facts sufficient to state a claim for relief as against counterdefendant MGF. On
 10 this motion, MGF seeks issuance of an Order dismissing the counterclaim, without leave
 11 to amend, in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure.
 12 This motion is made and based upon 1) this Notice of Motion and accompanying Points
 13 and Authorities; and 2) such other pleadings, papers and records on file in this action,
 14 and on such argument and evidence as may be presented to the Court in connection
 15 with this motion.

16 A copy of MGF's proposed Order is appended to this motion.

17 Dated: May 1, 2008

18 Respectfully Submitted,

19 SHAPIRO BUCHMAN PROVINE & PATTON, LLP

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 21 By: _____
 22 John H. Patton, Cal. SBN 069261
 23 Attorneys for Plaintiff and Counterdefendant
 24 Monterey Gourmet Foods, Inc.

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17 Defendants.

No. C08-01316 (JCS)

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Proposed

**ORDER GRANTING MOTION OF
COUNTERDEFENDANT MONTEREY
GOURMET FOODS, INC.'S TO DISMISS
COUNTERCLAIM OF WINDSOR
QUALITY FOOD COMPANY, LTD.
[FRCP Rule 12(b)(6)]**

Date: June 6, 2008
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Trial Date: Not Set

21 AND RELATED COUNTERCLAIM.
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24 **ORDER GRANTING MOTION TO DISMISS COUNTERCLAIM**

25
26 The motion of Plaintiff and Counterdefendant Monterey Gourmet Foods, Inc.
27 ("MGF") to dismiss the counterclaim of Defendant and Counterclaimant Windsor Quality
28 Food Company Ltd. ("Windsor") came on regularly for hearing pursuant to notice on

1 June 6, 2008, in Courtroom A of the United States District Court for the Northern District
2 of California, the Honorable Joseph C. Spero presiding. Plaintiff, counterdefendant and
3 moving party appeared by its counsel of record; defendant, counterclaimant and
4 opposing party Windsor appeared by its counsel of record.

5 The Court having read and considered the pleadings, papers and arguments
6 submitted in support of and in opposition to the motion, and good cause appearing
7 therefore, now, therefore,

8 **IT IS HEREBY ORDERED THAT THE MOTION IS GRANTED, AS FOLLOWS:**

9 1. Windsor's counterclaim is dismissed on grounds that it fails to state facts
10 sufficient to state a claim fro fraud against counterdefendant MGF.

11 2. Further, because the counterclaim cannot be amended to state a valid
12 claim for fraud against counterdefendant MGF, the motion is granted without leave to
13 amend.

14 Dated: _____

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17 _____
18 Joseph C. Spero
19 UNITED STATES MAGISTRATE JUDGE
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